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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,536

12/12/2003

Donald J. White JR.

7858MD

9705

27752

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07/13/2007

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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

07/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/734,536

Applicant(s)

WHITE ET AL.

Examiner

Lezah W. Roberts

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on April 25, 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2 and 4-9 is/are pending in the application.
- 4a) Of the above claim(s) 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed April 25, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claims***

#### **Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejection)**

Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Degenhardt et al. (US 4,877,603). The rejection is maintained.

Applicant argues there is no disclosure or any suggestion whatsoever in Degenhardt et al. regarding the use of the present polymers to deposit a surface conditioning film onto the teeth. The reference is limited to anti-calculus and anti-plaque effects. This argument is not persuasive.

The claims recite the agent is a polyelectrolyte selected from the group consisting of polyphosphonates, etc. The claims do not describe the type of polyphosphonate. When looking to the specification for guidance, there appears to be no indication that only certain polyphosphonates have the ability to create a film on the teeth. Therefore it would be inherent that the polymers of the reference will be able to deposit a film providing the properties disclosed by the instant claims.

#### **Claim Rejections - 35 USC § 102 – Anticipation (New Rejection)**

Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaffar et al. (US 5,032,386).

Gaffar et al. disclose oral compositions comprising copolymers of polyphosphonic acids as anti-bacterial enhancing agents (col. 7). They comprise 0.5 to 4% of the compositions (see claims). The provisional application of instant applicant (60/165351) specifically discloses the polymers of the reference a polyelectrolytes suitable for the instant invention. Therefore the compounds inherently have the properties recited by the instant claims. The compositions also comprise a fluoride source such as stannous fluoride. The compound releases 25 ppm to 5,000 ppm of fluoride ions, which is 75 ppm to 15,000 ppm of stannous ions (col. 12, lines 65-68). The reference anticipates the claims insofar as it discloses an oral composition comprising a polymeric surface-active agent and a stannous ion source.

#### **Obvious-Type Double Patenting**

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,821,507. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both read on oral composition comprising a polymeric surface-active agent, stannous ions and a fluoride source. A terminal disclaimer was not filed with the amendment. The rejection is maintained.

Claims 1-2 and 4-6 are rejected.

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No claims allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614



Frederick Krass  
Primary Examiner  
Art Unit 1614

